

II. Changes Made Since the Proposed Rule

This part of the preamble describes briefly the changes we made since the proposed rule as a result of comments and our own review. A reader who is interested in a quick overview of the changes we made between the proposed and final rules may find this part useful. However, if you are looking for a detailed description of all the final rule changes from the existing regulations, you should look at the section-by-section analysis which appears later in this preamble.

Section 4100.0-5 Definitions.

We changed the definition section in several respects in the final rule.

“Active use.” In this definition, we have substituted the word “livestock” for “rangeland” in the reference to carrying capacity. The change makes the definition consistent with all other references to “carrying capacity” in the rule.

“District.” We have amended the definition for the term “District” to update the regulations as to the organization of BLM field offices.

“Ephemeral rangelands.” We have revised the definition for this term by removing the misstatement that production of sufficient forage by ephemeral range was necessarily unusual.

“Interested public.” We amended this section to make it clear that, in a request to be considered a member of the interested public, a person must identify the specific allotments in which the person or entity is interested. We also added language providing that when members of the interested public submit comments or otherwise participates, they must address the management of a specific allotment.

Subpart 4110 – Qualifications and Preference

Section 4110.2-3 Transfer of grazing preference.

In the final rule we amended this section to make it clear that a transfer application must show the base property and the grazing preference attached to that base property.

We also removed the phrase “if the applicant leases the base property” from the second sentence of paragraph (c), and removed the third sentence entirely. This will clarify that anyone with an interest in the base property, not just an owner who is leasing the property to the preference holder, must provide written consent before a preference transfer can take place. The third sentence addressed a situation unique to the historical origins of grazing preference that is no longer applicable.

Section 4110.3 Changes in grazing preference.

We amended paragraph (a)(2) of section 4110.3 to make it clear that BLM can make changes in grazing preference to assist in making progress toward restoring ecosystems to properly functioning conditions. We also amended paragraph (c) to make it clear that the analysis of social, economic, and cultural factors that BLM will perform before changing preference will be under NEPA (42 U.S.C. 4332).

Section 4110.3-1 Increasing active use.

In the final rule we have added language in the introductory text of section 4110.3-1 to make it clear that decisions increasing active use are also based on monitoring or documented field observations, just as decisions decreasing active use must be. Changes in preference, whether increases or decreases, already must be supported by monitoring or documented field observations.

We have also amended paragraphs (a) and (b) to make it clear that BLM must determine that additional forage is available for livestock, as opposed to other consumption or use, before we can authorize livestock grazing use of it on a temporary or sustained-yield basis.

Section 4110.3-3 Implementing changes in active use.

We amended section 4110.3-3 in the final rule in 3 respects:

- We changed “shall” to “will” in paragraph (b)(1) to reflect standard usage in BLM regulations. This change has no practical effect on the obligatory nature of the provision.

- We added the word “or” in paragraph (b)(1)(i) as a grammatical correction.

- We corrected a cross-reference in paragraph (b)(ii).

Section 4120.2 Allotment management plans and resource activity plans.

In section 4120.2(c), we changed “shall” to “will” to reflect standard usage in BLM regulations. This change has no practical effect on the obligatory nature of the provision.

Section 4120.3-1 Conditions for range improvements.

In section 4120.3-1(f), we changed “shall” to “will” to reflect standard usage in BLM regulations. This change has no practical effect on the obligatory nature of the provision.

Section 4120.3-2 Cooperative range improvement agreements.

We further amended paragraph (b) by adding the word “will” to make it clear that shared ownership of range improvements is not merely descriptive but regulatory and prospective.

Section 4120.3-3 Range improvement permits.

We have revised paragraph (c) of section 4120.3-3 for purposes of clarification. The language in the existing text is unnecessarily convoluted and confusing. The point of the paragraph is to set the stage for what this part of the regulations is really about: if BLM lets a third party graze on your allotment, how do we address the use and maintenance of range improvements occurring on that allotment? We also removed a reference to conservation use.

Section 4120.5-2 Cooperation with Tribal, state, county, and Federal agencies.

In the final rule, we have amended the introductory text and added paragraph (c) of section 4120.5-2 to add Tribal grazing boards to the list of entities with which we will cooperate, and to make it clear that BLM is formally required to cooperate only with Tribal, state, county, or local grazing boards that are established under Tribal or government authority, as opposed to private organizations that might assume the title “grazing board.” We also added “Tribal agencies” to the section heading and to the general provisions on cooperation.

Section 4130.1-1 Filing applications.

We further amended paragraph (b) of section 4130.1-1 to correct an unintentional flaw, in that the paragraph seemed to refer to renewal of new permits. We are also making it clear in paragraph (b)(2) that the section refers to permits and leases that authorize use of new or transferred preference.

Section 4130.3 Terms and conditions.

In the final rule, we amended proposed section 4130.3 by removing paragraphs (b)(1) and (b)(2) in response to comments. Paragraph (b)(1) referenced terms and conditions that are not subject to review by OHA, and identified terms and conditions derived from biological opinions as an example. Paragraph (b)(2) restricted the right of appeal and protest where it was not necessary to do so. We also amended paragraph (c) to make clear how BLM would authorize grazing if BLM made numerous changes in terms and conditions of a permit or lease, and upon an appellant's petition, OHA stayed only one or a portion of them. In this circumstance, BLM would authorize use, with respect to the stayed terms and conditions, according the comparable terms and conditions that were in effect prior to BLM's decision to change them in combination with the changed terms and conditions that were not stayed by OHA.

Section 4130.3-2 Other terms and conditions.

In the proposed rule, we amended section 4130.3-2 by removing paragraph (h), which provides that the authorized officer may include in permit and lease terms and conditions a statement disclosing the requirement that permittees and lessees shall provide administrative access across private and leased lands if it is necessary for the orderly management and protection of public lands. In response to public comments, we have restored paragraph (h) in this final rule. (We did this by removing the amendatory text that appeared in the proposed rule directing the removal of paragraph (h). Thus, although the regulatory text in this final rule contains no mention of section 4130.3-2, the effect of the final rule is to leave paragraph (h) intact.)

Section 4130.3-3 Modification of permits or leases.

We removed the words "biological assessments or biological evaluations prepared under the Endangered Species Act, and other" from section 4130.3-3(b), because it is unnecessary to highlight biological assessments and biological evaluations as examples of reports during the preparation of which BLM seeks input from affected permittees, lessees, states, and the interested public. We added the word "otherwise" in paragraph (b) because increasing or decreasing grazing use is a change in terms and conditions of a grazing permit or lease. Without the word, the paragraph seems to read that such an increase or decrease is not a change in terms and conditions.

Section 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits and leases, including temporary nonuse.

In the final rule, we added "temporary nonuse" to the heading of section 4130.4 as a convenience to readers. We also removed language in paragraph (a) of the section listing reasons for allowing temporary changes in grazing use within the terms and conditions of the grazing authorization.

We have amended paragraph (d)(2) of section 4130.4 of the proposed rule, which becomes paragraph (e)(2) in the final rule, by changing the word "will" to "may" in order to avoid an interpretation of this provision that BLM has no discretion to deny temporary nonuse.

We also amended paragraph (f) of the proposed rule, which becomes paragraph (g) in the final rule, to provide that permittees or lessees “must” apply if they need temporary changes in grazing use. The proposed rule stated that they “should” apply. The final rule also makes it clear that such an application must be in writing.

We amended paragraph (b) to recognize that the same application may cover both temporary nonuse and removal of forage either before the begin date or after the end date, and to allow such changes that conform to flexibility limits specified in an allotment management plan under § 4120.2(a)(3) despite the 14 day limit.

Finally, we reordered the paragraphs in the section more logically, redesignating paragraph (a)(2) as (c) and adjusting the succeeding paragraph designations accordingly, and made editorial changes for purposes of clarity.

Section 4130.6-2 Nonrenewable grazing permits and leases.

In the final rule, we redesignated the proposed text as paragraph (a) and added a new paragraph (b) allowing BLM to make a decision issuing a nonrenewable grazing permit or lease, or affecting an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision.

For purposes of clarity and ease of usage, in the final rule we have amended the first sentence of section 4130.6-2(a) by adding a cross-reference to section 4110.3-1(a), which provides for the disposition of additional forage temporarily available.

Section 4130.8-1 Payment of fees.

In the final rule we further amended paragraph (h) of section 4130.8-1 to make it clear that failure to make payment within 30 days is a violation of a prohibited act in section 4140.1 and may result in enforcement action.

Section 4130.8-3 Service charges.

In the final rule we added language to paragraph (a) of section 4130.8-3 providing that BLM will adjust the service charges periodically as costs change, and publish notice thereof in the Federal Register, and revised paragraphs (a) and (b) for clarity. We also restored supplemental grazing fee billings to the list of services for which BLM imposes a service charge.

Section 4140.1 Acts prohibited on public lands.

In the final rule we made an editorial change in section 4140.1(a)(2) for purposes of clarity, and corrected a typographical error in section 4140.1(c)(3)(ii).

Section 4150.2 Notice and order to remove.

In the final rule we corrected an erroneous cross-reference in paragraph (d).

Section 4150.3 Settlement.

In the final rule, we amended new paragraph (f) of section 4150.3 to make it clear that “this part” refers to all of part 4100 and that grazing will continue pending

completion of the administrative appeal process, as opposed to resolution of judicial appeals.

Section 4160.1 Proposed decisions.

In the final rule, we added necessary cross-references to paragraph (c) of section 4160.1, which was not amended in the proposed rule. These additions conform the paragraph to the addition of section 4130.6-2(b) in this rule, and the addition of section 4190.1(a) in a previous final rule (68 FR 33804, June 5, 2003).

Section 4160.3 Final decisions.

In the final rule, we also added necessary cross-references to paragraph (c) of section 4160.3 to conform the paragraph to the addition of section 4130.6-2(b) in this rule, and the addition of section 4190.1(a) in a previous final rule (68 FR 33804, June 5, 2003).

Section 4160.4 Appeals.

In response to comments by OHA and others, we have removed paragraph 4160.4(c) in the final rule, and simplified paragraph (b). We have revised paragraphs 4160.4(b)(1), (2), and (3) to clarify that, when OHA stays all or part of a decision modifying or renewing a grazing permit or lease, or a decision offering or denying a permit or lease to a preference transferee, grazing may proceed, with respect to the portions of the decision that were stayed, under comparable terms and conditions of the

permit or lease that immediately preceded the decision that was stayed, subject to any relevant provisions of the stay order.

Section 4180.1 Fundamentals of rangeland health.

We have removed the language from the introductory text of this section that requires BLM to modify grazing management to ensure that the conditions described by the fundamentals of rangeland health exist only where standards and guidelines have not been established under section 4180.2, and added in its place a characterization of the purpose of the fundamentals of rangeland health.

We have also amended paragraph (d) of section 4180.1 to remove the reference to “at-risk” species.

Section 4180.2 Standards and guidelines for grazing administration.

As in section 4180.1, in section 4180.2 also we have removed references to “at-risk” species in paragraphs (d)(4), (e)(9) and (f)(2)(viii). We also changed “or” to “and” before the phrase “other special status species” in (d)(4).

We have added language in section 4180.2(b) allowing BLM to extend the deadline for making a decision following a determination when legally required processes that are the responsibility of another agency prevent completion within 24 months.

Finally, we made procedural changes in paragraph (c) to provide that if a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then the authorized officer will use existing or new monitoring data to identify the significant factors that contribute to failing to achieve the standards or to conform with the guidelines.